

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

1. My name is Jamie R. Welton. I am over eighteen (18) years of age and am fully competent and authorized to execute this Declaration. The matters stated herein are true and correct and within my personal knowledge.

2. I submit this Declaration in support of Plaintiffs' Opposition to Defendant's Motion to Preclude Plaintiffs' Expert Testimony and Reports and for Sanctions (the "Opposition" and "Defendant's Motion," respectively).

3. I am a partner at the law firm of Lackey Hershman, L.L.P., and I am co-counsel for Taberna Capital Management, LLC (“Taberna”) and counsel for Larry Lattig, Litigation Trustee for the First Magnus Litigation Trust, as Successor in Interest to Taberna Capital Management, LLC and The Bank of New York Mellon Trust Company, N.A., Solely in its

Capacity as Trustee under the Indenture and Property Trustee for the First Magnus TPS Trust in the above-captioned matter.

4. In addition to my representation of Plaintiffs in the above-captioned matter, I am counsel for Larry Lattig, Litigation Trustee for the First Magnus Litigation Trust (the “FMFC Litigation Trustee” and the “FMFC Litigation Trust”), appointed pursuant to the Second Amended Plan of Liquidation Filed by First Magnus Financial Corporation (the “FMFC Plan” and “FMFC,” respectively) in *In re First Magnus Financial Corporation*, Case No. 4-07-bk-01578, pending in the United States Bankruptcy Court for the District of Arizona (the “FMFC Bankruptcy Case”). In accordance with the FMFC Plan, the FMFC Litigation Trustee and his representatives, including myself, have access to and have reviewed various books and records of FMFC, including, but not limited to, FMFC’s electronic systems, as such records were maintained by FMFC in the ordinary course of business.

5. As part of my representation of Plaintiffs’ in the above-captioned matter and the Litigation Trustee in the FMFC Insider Litigation, I have been involved in the discovery process, including, *inter alia*, expert discovery.

6. As set forth in Exhibit Nos. 1-3, (attached hereto), Plaintiffs proposed dates for the depositions of the designated experts.

7. Following Plaintiffs’ proposed deposition dates, counsel for Defendant, R. Kahn, requested that depositions of the designated experts be delayed in order to do them in Tucson, Arizona, in conjunction with the FMFC Insider Litigation.

8. Pursuant to agreement of the parties and following the production of Mr. Morriss’ Supplemental and Rebuttal Report, the parties conducted the expert depositions as agreed (Mr.

Morriss was deposed on November 11-12, 2010, and Mr. O'Bryan was deposed on November 15, 2010).

#### **Authentication of Documents**

9. Attached hereto as Exhibits 1 through 11 are true and correct copies of the documents identified below. The expert reports and excerpts from the deposition testimony identified below were taken in the above-captioned case, unless otherwise indicated.

Exhibit No. 1.	Email dated September 23, 2010 from J. Welton to counsel regarding the availability of L. Morriss for his deposition
Exhibit No. 2.	Email dated September 23, 2010 from J. Welton to counsel regarding L. Morriss being in trial October 11 through October 22
Exhibit No. 3.	Email dated September 24, 2010 from T. Jackson to J. Welton regarding agreement to the expert depositions
Exhibit No. 4.	Email dated April 21, 2005 from G. Malis to J. Chopra regarding gt letter
Exhibit No. 5.	Expert report by J. Duross O'Bryan dated September 10, 2010 (served in the FMFC Insider Litigation)
Exhibit No. 6.	Expert report by J. Duross O'Bryan dated September 17, 2010
Exhibit No. 7.	Deposition Excerpts of Larry Morriss dated November 11, 2010
Exhibit No. 8.	Deposition Excerpts of J. Duross O'Bryan dated November 15, 2010
Exhibit No. 9.	Deposition Excerpts of James F. Smith, Ph.D. dated November 17, 2010 (in the FMFC Insider Litigation)
Exhibit No. 10.	Deposition Excerpts of Doug Lemke dated June 25, 2010
Exhibit No. 11.	Deposition Excerpts of Karl Young dated August 23, 2010 (in the FMFC Insider Litigation)
Exhibit No. 12.	Letter from D. Dwyer to C. Fornaris, copying G. Jaggi, dated July 31, 2006
Exhibit No. 13.	Excerpts from the Due Diligence Questionnaire, dated July 17, 2006

**Evidence in Support of Plaintiffs' Request for Attorney's Fees  
Pursuant to Fed. R. Civ. P. 37(a)(5)(B)**

10. I am an attorney licensed to practice in the State of Texas, and I have been licensed to practice for more than ten (10) years. I am also licensed in the United States Supreme Court, the Court of Appeals for the Second Circuit, the Court of Appeals for the Fifth Circuit, the United States District Court for the Southern District of Texas, and the United States District Court for the Northern District of Texas. Based on my experience as a commercial litigator who has represented clients in numerous matters in New York, I am familiar with the customs and practices of commercial litigators in New York, New York, and the amount of attorneys' fees and costs that would be reasonable for a dispute of this like and kind.

11. Plaintiffs' counsel spent more than 7 hours researching, drafting, and preparing the Opposition with respect to Defendant's request for Rule 37 sanctions.

12. Plaintiffs' counsel's hourly rate for providing legal services in complex commercial disputes, such as the above captioned matter, is \$500.00 per hour.

13. Based on my education, training, experience, and skill, the amount of \$3,500 in attorneys' fees is both customary and reasonable in responding to and opposing the sanctions portion of Defendant's Motion, in a commercial dispute of this like and kind in New York, New York.

14. I declare under penalty of perjury as prescribed by 28 U.S.C. § 1746 that the foregoing Declaration is true and correct.

Executed this 13<sup>th</sup> day of December, 2010.

/s/ Jamie R. Welton

Jamie R. Welton  
Lackey Hershman, L.L.P.  
Attorney for Plaintiffs